

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,)	Application No. NUSF-1
on its own motion, seeking to establish)	Progression Order No. 18
guidelines for administration of the)	
Nebraska Universal Service Fund)	

COMMENTS OF TIME WARNER CABLE

I. Introduction

Time Warner Cable Information Services (Nebraska), LLC d/b/a Time Warner Cable (hereinafter "Time Warner Cable") hereby submits comments in the above-referenced docket. Time Warner Cable appreciates the opportunity to submit comments in this matter responsive to Progression Order No. 18, dated September 26, 2006 entered herein by the Nebraska Public Service Commission (the "Commission"). Therein, the Commission sought comment on specific issues outlined below, and Time Warner Cable's following comments are limited thereto.

II. Question Presented

Pursuant to Progression Order No. 18, the Commission sought input on a proposed requirement "that interconnected VoIP providers offering service in Nebraska contribute to the NUSF based on the FCC's safe harbor allocation factor."

III. Responsive Comments

Neb. Rev. Stat. § 86-323 governs the imposition of the universal service fund charge in the State of Nebraska:

The Legislature declares it is the policy of the state to preserve and advance universal service based on the following principles:

- 1) Quality telecommunications and information services should be available at just, reasonable and affordable rates;

- 2) Access to advanced telecommunications and information services should be provided in all regions of the state
- 3) Consumers in all regions of the state, including low-income consumers and those in rural and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas;
- 4) All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

(emphasis supplied).

Clearly, the Nebraska Legislature only contemplated the imposition of state universal service obligations on "providers of telecommunications services" when enacting Neb. Rev. Stat. § 86-323.

As Progression Order No. 18 notes, on June 27, 2006 the FCC issued released an interim order in its docket entitled *In the Matter of Universal Service Contribution Methodology In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, CC Docket No. 96-45, 2006 WL 1765838 (referred to in Progression Order No. 18 and herein as the "Contribution Order"). Therein, the FCC specifically stated that it was not taking any position on the seminal issue of whether interconnected VoIP services constitute "telecommunication services" as opposed to "information services." In doing so, the FCC stated:

The Commission has not yet classified interconnected VoIP services as "telecommunications services" or "information services" under the definitions of the Act...Absent our final decision classifying interconnected VoIP services, we analyze the issues addressed in [the Contribution Order] under our permissive authority pursuant to Section 254(d) and our Title I ancillary jurisdiction. Specifically, we find that interconnected VoIP providers are "providers of interstate telecommunications" under Section 254(d), and we assert the

Commission's permissive authority to require interconnected VoIP providers "to contribute to the preservation and advancement of universal service "because the public interest so requires."

(Contribution Order at ¶ 35). Thus, in requiring interconnected VoIP providers to make federal universal service fund contributions, the FCC relied not upon a finding that interconnected VoIP service constitutes "telecommunications services," but rather on its ancillary jurisdiction and assertion that "the public interest so requires" such a contribution.

This Commission's Progression Order No. 18 identifies no such corresponding ancillary power granted to this Commission that would allow it to impose a state universal service contribution requirement on interconnected VoIP providers under a premise that would be consistent with that used by the FCC in the Contribution Order.

Accordingly, the Commission's proposal set forth in Progression Order No. 18 seeks to extend improperly the definition of "telecommunications services" under Nebraska law by relying on an apparent misinterpretation of the premise and authority utilized by the FCC in its Contribution Order. To date, the FCC has yet to definitively address the issue of whether interconnected VoIP services constitute "telecommunications services" and it would be improper for the Commission to presuppose the FCC's decision on that issue while it remains pending.

Notwithstanding, Time Warner Cable wishes to underscore its commitment to the public policy underlying Nebraska's universal service fund obligations. In this regard, as an interconnected VoIP services provider, Time Warner Cable continues to collect and remit the NUSF surcharge in connection with its provision of VoIP service, as it has since it began providing service in Nebraska.

Respectfully Submitted,

TIME WARNER CABLE

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that one original and five (5) copies of the foregoing, along with an electronic copy of the same, were served upon Andy S. Pollock, Executive Director of the Commission, on this 17th day of November, 2006, by electronic and regular U.S Mail.

